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American State Trials. Edited by JOHN D. LAWSON, LL.D.
Volumes II., III. (St. Louis, Mo.: F. H. Thomas Law Book
Company. 1914. Pp. xviii, 937; xx, 909.)

THE second and third volumes of this valuable work will be welcomed by scholars interested in American history, in sociology, in human nature, and by general readers, as well as by jurists. They contain matter which, hitherto, has been inaccessible to almost everyone and which throws light upon the politics, the Constitution, and the customs of the citizens of the United States, with illustrations of the rhetoric prevalent among them during the nineteenth century, besides many interesting narratives. The high standard set by the first volume has been maintained. The trials are published *verbatim* from the original reports. There are apparently no omissions such as too often prevent the reader of a repertory from finding what he seeks.

Dr. Lawson has undertaken a labor that might occupy the time of several scholars. It is consequently no wonder that his notes often omit what might reasonably be expected. This is especially remarkable in the most important case in these two volumes: the trial of Thomas Wilson Dorr for treason against the state of Rhode Island. The bibliography there omits the most valuable collections of material upon the subject: the report of the Burke select committee to the House of Representatives (*House Doc. No. 546*, 28 Cong., 1 sess.), and *The Dorr War*, by Dr. Arthur M. Mowry (Providence, 1901). There is no mention of the attempt to procure the review of the decision of the state court by the Supreme Court of the United States. The application for a writ of habeas corpus was denied because the prisoner was denied the opportunity to apply personally for the same; and it was held that no third person could file a petition on his behalf (*Ex parte Dorr*, 3 Howard 103). When it was sought by an action of trespass to determine which of the two state governments had the better right, the Supreme Court held that the federal judiciary was bound to support the one which had been recognized by the federal executive and consequently refused to pass upon the constitutional questions involved (*Luther v. Borden*, 7 Howard 1).

There is no citation of the places where the reader can find the opinion of the judges of the state supreme court as to the invalidity of the People's Constitution and those of the seven lawyers who supported the contrary contention. It would have been well to mention that Van Buren, Benton, Governor Marcus Morton of Massachusetts, and George Bancroft, the historian, agreed with Dorr's position. A reference to the more modern authorities upon the question, whether a constitution can lawfully be altered by the people in a different manner from that specified in the instrument itself, would also have been illuminating. This is discussed in Jameson's *The Constitutional Convention* (fourth edition), § 563, etc.; in the opinion of the supreme court

of Rhode Island *In re* Constitutional Convention, 14 R. I. 649, A. D. 1883; and in a number of pamphlets published in Rhode Island and elsewhere, including one by Judge Bradley of that state. The letter of President Tyler to Governor King saying that, if necessary to preserve order, he would support the established government, which is quoted in Burke's report and to which reference is made in the arguments upon the trial, might well have been set forth in full. A reference to the place where it can be found might, at least, have been inserted. Even *Ex parte* Bollman and Swartwout, cited in the argument of counsel, is left without a mention of the book where it is reported (4 Cranch 75). It would have necessitated more labor to find and note what is known of the previous trial of Colonel Cooley for acts similar to those of Dorr, which Chief Justice Durfee cited as a precedent against the latter. There is no mention of the trials of Dorr's other adherents: William H. Smith, Dutee J. Pearce, Barrington Anthony, and Benjamin Arnold, jr. It would have added color to the report to have quoted the subsequent act of the assembly held to have been unconstitutional, to which a reference is made. This ordered the clerk of the supreme court for the county of Newport to "write across the face of the record of the judgment the words 'Reversed and Annulled by order of the General Assembly at their January Session A. D. 1854'".

The report of the trial of Bathsheba Spooner does not state that the evidence is quoted from the notes of one of the justices, Jedediah Foster. (His name is there spelt "Jededeah".) And he is the only one of the judges before whom the trial took place whose biography is omitted. It may be found in the *Boston Gazette* of November 9, 1779. He was born in 1726 and died in 1779, his death being the result of a chill, received when crossing Lake Champlain to Fort Ticonderoga upon military service for the state, and of which the effects were increased by his labors in connection with the Massachusetts constitutional convention. He was an officer in the last French and Indian War, as well as during the Revolution. He was recognized as the leading patriot in Massachusetts west of the Atlantic seaboard. According to the tradition of the town of Brookfield, he, and not John Adams, was the author of the first draft of the constitution of Massachusetts. An essay by her grand-nephew, Mr. Samuel Swett Green, argues that Mrs. Spooner was insane at the time of her husband's murder, the cause of her insanity being her condition of pregnancy operating upon an hereditary taint.

The statement by Thurlow Weed as to Whitney's confession concerning the circumstances of Morgan's death is not placed where it would naturally be expected, in the account of the trial of Seymour and others for Morgan's abduction; but is tucked away in the preface, where no one would think of looking for it. It would have been well to have added one or two of the anecdotes concerning Thurlow Weed,

which some might think affected his credibility; at least his famous answer when doubt was expressed as to whether the body found in the Niagara River was that of Morgan, "It is a good enough Morgan until after the election." The trial of Clough for embracery in connection with a libel suit brought by an Anti-Mason should have followed that of Morgan's abductors, instead of being placed in a later part of the volume. In the narrative of Walker's trial for aiding slaves to escape from Florida in 1844, it is said that this was the subject of a poem by Whittier; but we find there no hint that the poem is published at length in the preface.

The Colonel Spencer who appeared for the defendant in the Padrone Ancarola's case was not the slow and sedate James Clark Spencer, formerly judge of the superior court of the city of New York, and then known as one of the editors of Jones and Spencer's *Reports*; but a rampant criminal lawyer in New York City, called by the bar Charlie Spencer. As the only report was published by the philanthropical society that incited the prosecution, it is not surprising that his speech and cross-examination of plaintiff's witnesses, besides all the evidence offered for the defendant, is omitted and ignored. For this, of course, Dr. Lawson is not responsible.

It is hard to find a reason for the inclusion of the trial of Berthina Tucker.

If the difficulties and delay in the collection of material have prevented the editor from a chronological arrangement, an arrangement that was topical could to some extent have been followed. This would have been a great convenience to the reader. But it seems ill grace to note the demerits of a publication for which all scholars should be grateful. No historical library and no law library can afford to be without it.

ROGER FOSTER.

The French in the Heart of America. By JOHN FINLEY, President of the University of the State of New York. (New York: Charles Scribner's Sons. 1915. Pp. x, 431.)

PRESIDENT FINLEY has gathered into a well-printed and well-indexed volume of some 400 pages the lectures delivered by him in Paris and other cities of France, on the Hyde Foundation administered by Harvard University. The historical portions of the lectures are taken mainly from Parkman, "without whose long labors", says the lecturer, "I could not have prepared these papers". One lecture is devoted to Parkman, and in twenty or more scattered references there is sufficient material for a complete biographical sketch of that historian. Samuel M. Clemens also receives due attention as a descriptive writer. "Mark Twain has put forever on the map of letters (where the Euphrates, the Nile, the Ilyssus, the Tiber, the Seine, the Thames have long been) the Missis-